

**ANSWER TO VERIFIED
COMPLAINT, AFFIRMATIVE
DEFENSES, DEMAND FOR
STATEMENT OF DAMAGES
AND CERTIFICATION
PURSUANT TO L. Civ. R. 1.6**

8. SEC denies each and every allegation contained in Paragraph 8 of the Verified Complaint.

9. SEC denies each and every allegation contained in Paragraph 9 of the Verified Complaint.

10. SEC denies each and every allegation contained in Paragraph 10 of the Verified Complaint.

11. SEC denies each and every allegation contained in Paragraph 11 of the Verified Complaint.

12. SEC denies each and every allegation contained in Paragraph 12 of the Verified Complaint.

13. SEC denies each and every allegation contained in Paragraph 13 of the Verified Complaint.

14. SEC denies each and every allegation contained in Paragraph 14 of the Verified Complaint.

15. SEC denies each and every allegation contained in Paragraph 15 of the Verified Complaint.

SEPARATE DEFENSES

AS AND FOR A FIRST DEFENSE, THIS DEFENDANT ALLEGES:

The Verified Complaint fails to state a cause of action against SEC.

AS AND FOR A SECOND DEFENSE, THIS DEFENDANT ALLEGES:

SEC demands that liability be apportioned.

AS AND FOR A THIRD DEFENSE, THIS DEFENDANT ALLEGES:

Upon information and belief, the injuries sustained by plaintiff were not the result of any culpable conduct of SEC, but were solely the result of the culpable conduct of the plaintiff, or in the alternative, the amount of damages otherwise recoverable shall be diminished by the

percentage proportion of the culpable conduct of the plaintiff which contributed to the culpable conduct that caused the injuries.

AS AND FOR A FOURTH DEFENSE, THIS DEFENDANT ALLEGES:

Any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care, property damage or rehabilitative services, loss of earnings or other economic loss has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in CPLR § 4545.

AS AND FOR A FIFTH DEFENSE, THIS DEFENDANT ALLEGES:

Plaintiff may not recover all or part of the damages allegedly sustained by virtue of her failure to mitigate the damages allegedly sustained.

AS AND FOR A SIXTH DEFENSE, THIS DEFENDANT ALLEGES:

If plaintiff sustained damages as alleged in the Verified Complaint, other than by reason of her own culpable conduct, then such damages were caused in whole or in part by the culpable conduct of some third person or persons over whom SEC neither had nor exercised control.

AS AND FOR A SEVENTH DEFENSE, THIS DEFENDANT ALLEGES:

The negligence of those responsible for the accident or the occurrence alleged in the Verified Complaint constituted a separate, independent, superseding, intervening culpable act or acts which constitute the sole proximate cause of the accident or occurrence alleged.

AS AND FOR AN EIGHTH DEFENSE, THIS DEFENDANT ALLEGES:

Plaintiff has failed to state facts sufficient to provide a legal or factual basis to award compensatory damages to plaintiff under any of the causes of action alleged in the Verified Complaint on file herein.

AS AND FOR AN NINTH DEFENSE, THIS DEFENDANT ALLEGES:

At all times mentioned in the Verified Complaint, SEC has performed and discharged in good faith each and every obligation owed to plaintiff, if any.

AS AND FOR A TENTH DEFENSE, THIS DEFENDANT ALLEGES:

The conduct of SEC was not a substantial factor in bringing about the damages and injuries, if any, allegedly sustained by the plaintiff.

AS AND FOR A ELEVENTH DEFENSE, THIS DEFENDANT ALLEGES:

Other parties not named in the Verified Complaint herein who were neither the agents nor the employees of SEC were responsible parties. Therefore, plaintiff is barred from recovery against SEC based upon the liability of such others.

AS AND FOR A TWELVETH DEFENSE, THIS DEFENDANT ALLEGES:

The incidents and events described in the Verified Complaint were caused in whole or in part by other persons and/or entities. By reason thereof, SEC is entitled to have its liability to plaintiff for non-economic damages limited.

AS AND FOR A THIRTEENTH DEFENSE, THIS DEFENDANT ALLEGES:

Each and every cause of action in the Verified Complaint is barred by the statute of limitations.

AS AND FOR A FOURTEENTH DEFENSE, THIS DEFENDANT ALLEGES:

Plaintiff unreasonably delayed asserting her claim and/or rights, all to the detriment and prejudice of SEC. Therefore, plaintiff is barred from recovery against SEC pursuant to the doctrine of laches.

AS AND FOR A FIFTEENTH DEFENSE, THIS DEFENDANT ALLEGES:

Plaintiff is estopped from recovery on the Verified Complaint on file herein by virtue of the conduct of plaintiff.

AS AND FOR A SIXTEENTH DEFENSE, THIS DEFENDANT ALLEGES:

Plaintiff's Verified Complaint is barred, in whole or in part, because plaintiff did not exercise ordinary care, caution or prudence to avoid the injuries alleged; and the resulting damages, if any, sustained by plaintiff were proximately caused and contributed to by the negligence or intentional conduct of plaintiff.

AS AND FOR A SEVENTEENTH DEFENSE, THIS DEFENDANT ALLEGES:

Plaintiff is barred from recovery on the Verified Complaint on the grounds that the acts of plaintiff constitute a waiver of her right to recover damages.

AS AND FOR AN EIGHTEENTH DEFENSE, THIS DEFENDANT ALLEGES:

Any alleged damages plaintiff sustained by reason of the matters alleged in the Verified Complaint, to the extent not caused by the negligence, conduct, omission or fault of plaintiff, her agents, attorneys, partners and/or employees, were proximately caused by the negligent conduct, omission or fault of persons or entities other than SEC, for whose acts and/or omissions SEC is not responsible. Should SEC be found liable to plaintiff for matters alleged in the Verified Complaint, SEC is entitled to have a determination of its responsibility and fault, if any, compared with the responsibility and fault of all other persons and entities who proximately caused plaintiff's alleged damages.

AS AND FOR A NINETEENTH DEFENSE, THIS DEFENDANT ALLEGES:

The liability of SEC is limited under the terms of Article 16 of the C.P.L.R.

AS AND FOR A TWENTIETH DEFENSE, THIS DEFENDANT ALLEGES:

Plaintiff has failed to do equity in the matters alleged in the purported claims, and any recovery by plaintiff must be diminished or barred by reason thereof.

AS AND FOR A TWENTY-FIRST DEFENSE, THIS DEFENDANT ALLEGES:

With respect to all claims for relief against SEC, SEC joins in and incorporates by reference each affirmative defense alleged by any co-defendants to the extent such affirmative defense(s) applies to SEC.

AS AND FOR A TWENTY-SECOND DEFENSE, THIS DEFENDANT ALLEGES:

SEC was not the legal or proximate cause of any damages, if any, allegedly suffered by plaintiff.

AS AND FOR A TWENTY-THIRD DEFENSE, THIS DEFENDANT ALLEGES:

Plaintiff is not entitled under contract or statute to recover attorneys' fees for the acts alleged in the Verified Complaint.

AS AND FOR A TWENTY-FOURTH DEFENSE, THIS DEFENDANT ALLEGES:

Plaintiff is not entitled to recovery for any alleged damages suffered by plaintiff because plaintiff assumed the risk in acting in the manner which purportedly caused the injury to plaintiff.

AS AND FOR A TWENTY-FIFTH DEFENSE, THIS DEFENDANT ALLEGES:

That all risks and dangers connected with this situation at the time and place mentioned in the Verified Complaint were open, obvious and apparent and were known to and assumed by plaintiff.

AS AND FOR A TWENTY-SIXTH DEFENSE, THIS DEFENDANT ALLEGES:

SEC acted with due and proper care under the circumstances.

**AS AND FOR A TWENTY-SEVENTH DEFENSE, THIS DEFENDANT
ALLEGES:**

That any sums or consideration paid or promised to plaintiff by any person(s) or entity(ies) claimed to be liable for the injuries or damages alleged in the Verified Complaint shall

reduce any judgment rendered in favor of plaintiff as against SEC to the extent of the greater of either the sums or consideration paid or promised to plaintiff or the amount of the released tortfeasor's(s') equitable share(s) or the damages in accordance with General Obligation Law Section 15-108.

AS AND FOR A TWENTY-EIGHTH DEFENSE, THIS DEFENDANT ALLEGES:

If SEC is liable to plaintiff, which SEC expressly denies, then SEC is entitled to a set-off for all settlements/benefits received by plaintiff.

AS AND FOR A TWENTY-NINTH DEFENSE, THIS DEFENDANT ALLEGES:

SEC asserts all other affirmative defenses to the allegations of the Verified Complaint on file herein which is available to it under the law and which may arise based upon facts not known or not now recognized as operative respective of the legal issues raised by the allegations of the Verified Complaint on file herein.

WHEREFORE, defendant, **SCHINDLER ELEVATOR CORPORATION**, demands judgment dismissing the Verified Complaint herein together with interest, costs and disbursements as may be required by law.

DEMAND FOR STATEMENT OF DAMAGES

Pursuant to the automatic disclosure provisions of Fed. R. Civ. P. 26(a)(1)(A)(iii), demand is hereby made that plaintiff provide SEC with a written statement setting forth a computation of each category of damages claimed in this action.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 1.6

I, Matthew S. Schultz, hereby certify pursuant to Local Civil Rule 1.6, that the above-captioned matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

Dated: June 22, 2015

LeClairRyan

One Riverfront Plaza
1037 Raymond Boulevard, Sixteenth Floor
Newark, New Jersey 07102
T. 973-491-3600

885 Third Avenue – 16th Floor
New York, New York 10022
T. 212-697-6555

Attorneys for Defendant, Schindler Elevator
Corporation

By: 
Matthew S. Schultz

To: Jonathan E. Gold, Esq.
ROSENBAUM & ROSENBAUM, P.C.
100 Wall Street, 15th Floor
New York, New York 10005
Attorney for Plaintiff